

**BOARD OF APPEALS CASE NO. 5231**

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**BEFORE THE**

**APPLICANTS: John & Christine Farrugia**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance to permit an accessory  
structure within the recorded forest retention area;  
1001 Diamond Oaks Court, Bel Air**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 2/20/02 & 2/27/02**

**HEARING DATE: April 8, 2002**

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**Record: 2/22/02 & 3/1/02**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicants, John and Christine Farrugia, are requesting a variance, pursuant to Sections 267-30.14 and 267-26C(6) of the Harford County Code, to permit an accessory structure within the recorded Forest Retention Area in an R1/Urban Residential District.

The subject parcel is located at 1001 Diamond Oaks Court, Bel Air, Maryland 21014 and is more particularly identified on Tax Map 41, Grid 2C, Parcel 663, Lot 98. The parcel is within the Vineyard Oaks subdivision, consists of 0.593± acres, is zoned R1/Urban Residential District and is entirely within the Third Election District.

The Applicant, John Farrugia, appeared and testified that he has been unable to use his backyard since he and his family moved into their home in Vineyard Oaks. A forest retention area bisects the property and, due to the grade, his back yard is a year round sump. The parcel is heavily wooded and there is little if any useable yard area to the rear of the home as a result of the grade and forest area. In order to provide some use of the rear yard for his family he intends to construct a pool in the area that is now a year round sump. Through appropriate grading and construction the Applicant testified that he could both correct the situation to the rear of the house and provide a means of using the backyard recreationally without creating adverse impacts on his neighbors' properties. The Applicant testified that a number of homes in the neighborhood already have in-ground pools.

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Christine Farrugia, the co-Applicant appeared and her testimony confirmed that of her husband's regarding the sump condition and forest retention area. She had hoped that her home and yard would become a haven for her children and their neighborhood friends. Because of the constant area of wet earth, however, not even a swing set can be placed in the rear yard of her house. She and her husband have three children and they want to be able to provide an area for recreation on their property.

Mr. Bill Eydeloth and Mr. Tim Geslois appeared and testified that they are neighbors of the Applicants and both support the Applicants' request. Mr. Eydeloth is the adjacent property owner and he testified that a back yard pool would have no adverse impacts on his or other properties in the neighborhood. Because their homes are on a cul-de-sac, he was uncertain if neighbors would even know the pool was there after construction.

Mr. Duane Schmidt appeared and testified that he owns Rosedale Landscaping in Forest Hill. He testified that he has met with County officials regarding the backyard grading issues and assured the Hearing Examiner that construction of the pool as proposed would not have adverse impacts on water quality.

The Department of Planning and Zoning recommends approval of the Applicants' request, finding that there is a severe drainage issue on the Applicants property. During an inspection of the site, the Department noted, "Also observed was evidence of standing water, even though the County is experiencing extreme drought conditions." The Department went on to note that, "The Applicant proposes to correct the existing drainage problems in conjunction with the construction of the proposed pool and has proposed mitigation for the existing and proposed impacts in the forest retention area. The Applicant has submitted a schematic mitigation plan that includes a 10-foot limit of disturbance around the perimeter of the pool with only 4-foot concrete decking around the backside of the pool. The fencing will be placed as close to the backside of the pool as possible. The plan also proposes understory planting around the fencing. The Applicant has also proposed reforestation in the front and side yards in an amount equal to the impact in the recorded forest retention area."

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In conclusion, the Department admitted that the drainage problems associated with the parcel have created a unique condition that needs to be addressed. The Department opined that standing water is probably damaging the existing trees and the Applicants plan will mitigate those conditions and eliminate a condition that will continue to damage trees if left unabated.

### **CONCLUSION:**

The Applicants, John and Christine Farrugia, are requesting a variance, pursuant to Sections 267-30.14 and 267-26C(6) of the Harford County Code, to permit an accessory structure within the recorded Forest Retention Area in an R1/Urban Residential District.

Harford County Code Section 267-30.14 provides:

“Variances.

- A. The Board of Appeals may grant a variance to this Article in accordance with this section and §267-11 of this chapter.
- B. In granting a variance to this Article the Board shall issue specific written findings of fact demonstrating that the granting of the variance will not adversely affect water quality.”

Harford County Code Section 267-26C(6) provides:

“Use limitations. In addition to the other requirements of this Part 1, an accessory use shall not be permitted unless it strictly complies with the following:

- 6. No accessory use or structure, except fences, shall be located within any recorded easement area.”

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The Harford County Code, pursuant to 267-11 permits variances and provides:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

The Maryland Court of Special Appeals has provided guidance in matters of variance requests and described a two-step analysis in determining whether such requests should be granted. According to the guidance provided by the Court, the variance process is a two step sequential process:

1. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.
2. The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property’s uniqueness exists.” Cromwell v. Ward, 102 Md. App. 691 (1995).

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In this case, the property is unique. There is a forest retention area bisecting the property, however, because of severe drainage issues on the property, the forest is dying rather than being preserved. Proposed is one possible way to mitigate the drainage issue, allow the Applicants to make use of the back yard of their property for recreational purposes and all being done in a manner that will result in improved conditions for remaining forest cover without creating any impacts that are adverse to neighboring properties or water quality. The plan will actually promote the purpose of the Code in this regard as forest retention areas are designed to allow trees and forest cover to continue to grow and thrive.

The Hearing Examiner recommends approval of the Applicants' request subject to the following conditions:

1. The fence, to enclose the pool area, shall be installed as close to the perimeter of the pool and decking as possible.
2. The Applicant shall submit, to the Department of Planning and Zoning for review and approval, a detailed forest mitigation plan that includes limits of disturbance, location of existing trees, trees to be removed and those to remain, proposed grading, proposed landscaping with complete schedule of plant materials and sizes. This plan shall be insubstantial compliance with the plan submitted as part of the Application in this case and identified as Attachment 11 in the case file.
3. The forest mitigation plan must be approved by the Department of Planning and Zoning prior to commencement of any activity on the property and prior to issuance of permits for the pool and fence.
4. The proposed plantings be installed with the completion of the pool construction and prior to issuance of a use and occupancy permit.

Date: APRIL 22, 2002

William F. Casey  
Zoning Hearing Examiner